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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/517,641

07/14/2005

Ole Jan Myhre

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11/28/2008

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EXAMINER

ZEMEL, IRINA SOPJIA

ART UNIT

PAPER NUMBER

1796

MAIL DATE

DELIVERY MODE

11/28/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/517,641	<b>Applicant(s)</b> MYHRE ET AL.	
	<b>Examiner</b> Irina S. Zemel	<b>Art Unit</b> 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9-11-08</u> .   | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not clear how the claimed composition comprising polymers and non-polymeric fillers can be made by the Ziegler-Natta catalyst.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-8 and 11-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over US patent 6,096,014 to Haffner et al., (hereinafter Haffner”)in combination with WO 99/41310 to Borealis Polymer OY, (hereinafter “Borealis ‘310”).

The rejection stands as per reasons of record.

Claims 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over US patent 6,096,014 to Haffner et al., (hereinafter Haffner”)in combination with WO

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99/41310 to Borealis Polymer OY, (hereinafter "Borealis '310") as pallied to claim 1 above and further in view of US patent 5,008,296 to Antoon et al., (hereinafter "Antoon")

The rejection stands as per reasons of record.

### ***Response to Arguments***

Applicant's arguments filed 9-2-2008 have been fully considered but they are not persuasive. The applicants arguments are directed to each reference indivisually, rather than combined teachings of the references. In addition, the interpretation of the reference, especially the Haffner reference is very narrow. The applicants argue that the Haffner reference is directed to breathable films comprising metallocene-catalyzed polyethylenes. The applicants point out different protions of the reference that specifically disclose the catalyst and the polyethylenes obtained using such catalysts. The examiner does not dispute the fact that the preferred embodiments, and all claimed embodiments, of Haffenr, indeed, concentrate on the advantages of using metallocene polymerized catalysts. However, limiting the disclosure of the reference to just the preferred or claimed embodiments is techically and legally incorrect. It has been long established by the courts that the disclosure of the reference is not limited to the preferred embodiments and should be considered for all the teachings it contains. In the instant case, the reference expressly discloses compositions and breathable films that are based on conventional (Ziegler-type0 catalysts, such as Dowlex 2517, 2532 and other non-metallocene catalyzed polyethylenes. It is also very clear from the teachings of the Heaffner reference that using such polyethylene produced with such non-metallocene catalyst results in films that have some inferior properties as compared

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to the films utilizing Haffner's inventive embodiments, as well as some superior properties, such as tensile strength and elongation. Thus, the teachings of the entire reference, and not only the preferred embodiments provides very clear teachings that non-metallocene polyethylenes and their blends provide some advantages in breathable films and would have been obviously used for the applications requiring such improved properties.

The applicants further argue that Borealis reference does not concern breathable films and thus is not combinable with Haffner. The applicants further state that "Borealis gives no indication whatsoever about the performance of its polymers in the presence of a filler. One of ordinary skill in the art has, for example, no idea whether the resins of Borealis can be mixed with a filler and stretched to obtain a microporous breathable film without pinholes. Furthermore, there is no indication of what its water vapour transmission rate will be or its mechanical properties. For this reason, it is the Applicants' view that one of ordinary skill in the art would not look to Borealis as asserted in the Office Action." While the applicants are correct in their assertion that Borealis does not disclose breathable films, again, the applicants interpret the reference too narrowly, and, in addition, separately from the disclosure of the primary reference. The combined teachings of the references is what is relevant to the rejection of the claims. Specifically, while Borealis does not disclose breathable films, it does disclose thin films based on bi-modal polyolefins corresponding to the claimed polyolefins, and also expressly teaches that the films obtained from such polyolefins are superior to blends of polyolefins in the exactly the same properties (such as tensile

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strength) in which non-metallocene polyolefins are superior to metallocene polyolefins as discussed above and as illustrated in Haffners comparative examples. Therefore, the combined teachings of the references, and NOT the preferred embodiments disclosed in either one of the reference, would lead one of ordinary skills in the art to make the proposed substitution of polyolefins disclosed in illustrative or comparative examples of Haffner to achieve the films of superior specific properties, while may be on the expense of the other properties, depending on the final use of the films.

The rejection of claims, thus, stands as per reasons of record and discussion above.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Irina S. Zemel whose telephone number is (571)272-0577. The examiner can normally be reached on Monday-Friday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on (571)272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ Irina S. Zemel/  
Primary Examiner, Art Unit 1796

Irina S. Zemel  
Primary Examiner  
Art Unit 1796

ISZ